

REMARKS

Applicants gratefully acknowledge the courtesy of a telephone interview granted to Applicants' representative, James Heintz, on June 29, 2004 and an in-person interview granted on July 9, 2004 by Examiner Broda. During the telephone interview, the examiner informed Applicants' representative that the SAIC document (referred to in further detail below) had been obtained directly from SAIC by the Examiner. In response to an assertion that the SAIC document was not prior art because there was no evidence that it was published, the Examiner indicated that he might take the position that the reference could have been obtained via a FOIA request and that he might fashion a 103 rejection based on the reference as indicative of level of skill in the art pursuant to *In re Epstein*. At the in-person interview, the Examiner suggested portions of the specification that might provide a basis for adding additional limitations to the claims in order to distinguish over the references cited in the previous office action. The SAIC document and its use as a basis for a claim rejection was also discussed further. In addition, Applicants' representative pointed out that the SAIC document defined the likelihood that an aggressor would make an attempt as nothing more than 1 minus the likelihood of preventing an attempt.

Claims 1 and 7 are independent. Claims 2-6 depend from Claim 1 and Claims 8-12 depend from Claim 7. Claims 1 and 7 have been amended and new Claims 42-49 have been added. No new matter has been added. Support for the amendments can be found in Figures 5, 16 and 18 and at page 12, lines 16-24, page 14, line 22 - page 15, line 1, and page 19, line 20 - page 20, line 10. Claims 1-12 are pending in the application.

Claims 1-2, 4, 7-8 and 10 stand rejected under 35 U.S.C. 103 as obvious over the combination of an article entitled "SAVI: Systematic Analysis of Vulnerability to Intrusion" ("Sandia") and a document entitled "General Airport Assessment Plan"), purportedly prepared

pursuant to contract no. DTFA03-97-C-00036 bearing the date of November 1997 and submitted by Science Applications International Corporation (the "SAIC document"). Applicants dispute that this document constitutes a reference that qualifies as prior art under 35 U.S.C. § 102a or §102(b). Specifically, there is no indication that the SAIC document was disseminated to anyone other than Mr. Richard Lazarick who was listed on the front cover, and there is indication that the SAIC document was publicly accessible. Distribution of a document to a single person is not dissemination sufficient to qualify the document as prior art. Preemption Devices, Inc. v. Minnesota Mining & Mfg. Co., 221 U.S.P.Q. 841, 843 (Fed. Cir. 1984). Accessibility is a requirement in order for a reference to be considered as a publication. M.P.E.P. § 2128. As discussed above, the examiner obtained this document by requesting it from SAIC. However, prior to the Examiner's request to SAIC, the office had been unable to locate the document despite having had the instant application before it for several years. The Office's inability to locate this document in any library or in any document index is prima facie evidence that the document is not publicly accessible today and was not publicly accessible prior to the filing of the present application. The SAIC document is analogous to the student thesis at issue in In re Bayer, 196 U.S.P.Q. 670 (C.C.P.A. 1978), which had been sent to a three-member faculty committee but had not yet been indexed or catalogued. The C.C.P.A. held that, since the thesis "could have been located in the university library only by one having been informed of its existence by the faculty committee, and not means of customary research aids available in the library, the probability of public knowledge of the contents of the thesis was virtually nil" and that the thesis was not a publication within the meaning of 35 U.S.C. § 102(b). *Id.* at 674-75. Therefore, the SAIC document similarly does not qualify as a prior art reference, and withdrawal of all rejections based on the SAIC document is respectfully requested.

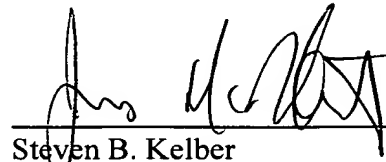
Claims 1, 4, 7, and 10 stand rejected under 35 U.S.C. § 103 as being obvious over Sandia in combination with Lazarick, “Airport Vulnerability Assessment - An Analytical Approach” IEEE 32nd Annual International Carnahan Conference on Security Technology, pp. 40-46 (“Lazarick”). This rejection is respectfully traversed. The claimed invention requires “determining a probability that a terrorist attack using the weapon and at the delivery point will occur.” Lazarick neither discloses nor suggests this step. Lazarick refers to a “likelihood of threat attempt” in Figure 1, but provides no further detail. Thus, Lazarick may simply be referring to a general threat level. Additionally, new claims 42-47 include additional limitations which are neither taught nor suggested by Lazarick. Still further, new claims 49 and 50 include the limitation that the probability is based on “at least one factor independent of the site.” Again, there is no teaching or suggestion of this limitation in Lazarick. Accordingly, withdrawal of the rejection is respectfully requested.

In response to the requirement for information under 35 U.S.C. § 1.105, applicants state that none of the applicants attended or participated in the AVAP or drafted or received any publications related to the AVAP.

In light of the above, Applicants submit that this application is now in condition for allowance and therefore request favorable consideration. If any issues remain which the Examiner feels may be best resolved through a personal or telephonic interview, The Examiner is respectfully requested to contact Applicants' counsel, James M. Heintz at (202) 861-4167.

Respectfully submitted,

PIPER RUDNICK LLP

A handwritten signature in black ink, appearing to read 'Steven B. Kelber', is written over a horizontal line.

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